

REMARKS

Applicant's counsel thanks the Examiner for the careful consideration given the application and for the courteous telephone interview conducted on October 23, 2009 between applicant's counsel and Examiners Kyle Purdy and David Blanchard. During the interview, the following items were discussed.

1. First, applicant's counsel discussed the invention. The invention is to add a soybean oil emulsion to a conventional fungicidal agent so that the emulsion acts as an adjuvant to improve the performance of the fungicidal agent. More specifically, the use of the soybean oil emulsion permits the fungicidal agent to be applied at a much lower rate than the standard rate, yet achieve the same or similar degree of effectiveness. The purpose of the invention is to permit the use of far less fungicidal agent, while maintaining the same or similar level of effectiveness, thus dramatically reducing the amount of toxic or harmful fungicidal agent injected into the environment and reducing the amount of fungicidal agent residue remaining on the crops and in the environment.

2. Next, it was discussed by applicant's counsel that the claims had been rejected in the most recent Office action under Section 103 as obvious over US 6528070 in view of US 5176736. Applicant's counsel pointed out that these references simply include long laundry lists of possible ingredients in various agricultural compositions, but did not teach applicant's specific method or composition. At the top of page 7 and at the middle of page 8 of the most recent Office action, the claims were rejected as *prima facie* obvious, "especially in the absence of evidence to the contrary". Thus, the Office action invited a Declaration of Unexpected Results to overcome the obviousness rejection.

3. Next, during the interview, applicant's counsel went over the Declaration of Alberto Sardo, which was filed on April 29, 2009. Applicant's counsel discussed the details of the Sardo Declaration, as follows. In the various Examples of the Declaration, a fungicidal agent was first applied without emulsion at a standard rate of application as stated on the label (line 2 of each Example; the standard rate of application is discussed in the specification at page 28 lines 1-10 and page 41 lines 1-3). Next, the agent was applied, with soybean emulsion, at a rate of application of about 1/3 of the standard rate (line 3 of each Example). The results of each trial are shown on the right side of each Example, wherein it shows that the effectiveness of the

fungicidal agent (with emulsion) at 1/3 of the standard rate is about the same as the effectiveness of the fungicidal agent (without emulsion) at the standard rate.

4. During the interview, it was noted that, in the results of each Example, there is usually a lower case letter to the right side of the numerical result. This is discussed in more detail in the specification at page 29 line 25 through page 30 line 3. In the area of statistics, the Duncan test is considered one of the best evaluation instruments for significance of the experimental data (see specification, page 29 lines 25-29). The Duncan test allocates a letter to each number; to the same letter corresponds numbers evaluated as not significantly different. For example, in the Sardo Declaration, at the top of page 4, in the results section on the right side, the first column has 4.9a, 0.3b and 0.8b. Although 0.3 and 0.8 are numerically different, they are evaluated, in connection with 4.9, as not significantly different from each other but both of them are evaluated as significantly different from 4.9. As discussed by applicant's counsel during the interview, the conclusion to be drawn from the Sardo Declaration is that, for all of the fungicidal agents, the use of the soybean emulsion of the invention permitted the agent to be used at about 1/3 of the standard rate, yet still provide about the same level of effectiveness as the standard rate. This provides much reduced fungicidal agent residue and toxic fungicidal agent remaining in the environment, with essentially no drop off in performance. Based on the prior art, the Sardo Declaration clearly establishes the surprising and unexpected results of the present invention. Clearly, based on the prior art, it was surprising and unexpected that the same level of performance could be provided at only 1/3 the standard rate of application. Clearly, the prior art does not teach that the rate of application can be reduced from the standard rate to 1/3 the standard rate, yet continue to provide the same level of performance. Through the surprising and unexpected results shown in the Sardo Declaration, the present invention permits much less toxic fungicidal agents to be injected into the environment and residue to remain on the agricultural cultivations and their products.

5. At the conclusion of the telephone interview, applicant's counsel agreed to add additional language to the main claim, to provide that the fungicidal agent was applied at a rate less than the standard rate but equal to or greater than about 1/3 of the standard rate. This limitation has now been added to claim 8.

The claims have been amended as agreed to during the telephone interview, and claims 8-9, 12-13 and 36-37 are now pending. At the conclusion of the interview, the Examiners stated

that, upon the inclusion of a limitation regarding the proportion of fungicidal agent used, reflective of the data in the Declaration, such would appear to overcome the Section 103 rejection, subject to further search and consideration. Applicant's counsel has added such a limitation, and applicant's counsel now thanks the Examiners for their statement.

Since the Sardo Declaration clearly shows and demonstrates the unexpected and surprising results of the present invention, it is clear that the claims as now presented define over the art of record and are in condition for allowance, which is respectfully requested.

If any further fees are required by this communication, please charge such fees to our Deposit Account No. 16-0820, Order No. LAVO-37109.

Respectfully submitted,
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